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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 30, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

Re: Implementation of Section IX of the Communications
Act, MD Docket No. 94-19 (Regulatory Fees)

Dear Mr. Caton,

Enclosed herewith for filing are the original and four (4)
copies of MCI Telecommunications Corporation's Opposition in
the above-captioned matter.

Please acknowledge receipt by affixing an appropriate
notation on the copy of the MCI pleading furnished for such
purpose and remit same to bearer.

Sincerely,

Donald F. Evans
by JCF

Donald F. Evans
Director, Federal Regulatory
Affairs
MCI Telecommunications Corp.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 30 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Implementation of Section IX) MD Docket No. 94-19
of the Communications Act)
)
Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

MCI OPPOSITION TO APPLICATION FOR REVIEW

MCI Telecommunications Corporation ("MCI"), pursuant to Section 1.115(D) of the Commission's Rules, hereby files its Opposition to Southwestern Bell Telephone Company's ("Southwestern") Application for Review of the Order in the above-captioned docket.¹

In its Application for Review, Southwestern raises the issue of whether fees payments for local exchange carriers (LECs) should be given exogenous treatment. Treating fees payments as exogenous would allow the LECs to raise interstate access rates by an amount equivalent to the fees payment. According to Southwestern, language in the Order directing the LECs to seek a rule waiver before treating fees as exogenous must be clarified or reconsidered because

¹ Southwestern Bell Telephone Company Revisions to Tariff F.C.C. No. 73, Transmittal No. 2316, Order, DA 94-354 (Com. Car. Bur. 1994).

the price cap rules already permit LECs to claim fees as exogenous costs.²

MCI disagrees, and urges the Commission to deny Southwestern's Application for Review. For Southwestern's argument to be correct, the Commission would have to ignore the plain language of the price cap rules, and ignore Commission precedent discussing the application of those rules, while relying instead on a Bureau-level decision to allow a tariff to take effect.

First, Southwestern's interpretation of the price cap exogenous cost rule ignores the plain meaning of Section 61.45(d). That rule requires that exogenous costs be "limited to those cost changes that the Commission shall permit or require." In MD Docket No. 94-19, the LECs raised the issue of whether fees payments should be declared exogenous. In the Report and Order, the Commission did not permit and did not require LECs to treat fees as exogenous increases to telephone rates. The Commission simply said that the LECs would have to seek a rule waiver. Therefore, unless the LECs can make a "good cause" demonstration that fees payments should result in increases to their price cap indexes through a request for waiver of the rules, fees payments shall not be given exogenous treatment. MCI submits that there is nothing to clarify.

² Southwestern Application for Review at 2 (citing Section 61.45(d) and subsection (1)(vi)).

Southwestern's next argument, that Section 61.45(d)(1)(vi) of the Commission's rules permits the LECs to treat fees as exogenous costs, rewrites history. This rule section, which allows LECs to claim "extraordinary" costs that the Commission shall permit or require, responded to concerns raised in the LEC price cap rulemaking concerning natural disasters. The LECs were concerned that price cap regulation did not permit them to recognize costs that would legitimately be incurred in responding to, e.g., a hurricane, ice storm, or earthquake. In the LEC Price Cap Order, the Commission decided not to make the costs of natural disasters automatically exogenous. It did, however, permit the LECs to request exogenous treatment on a case-by-case basis, hence the "permit or require" language in the rule section.³ There is nothing in the LEC price cap rulemaking to suggest that the Commission intended to use the "extraordinary" category of exogenous costs as a catch-all category that enables the LECs to file any and all costs that they believe are exogenous. Southwestern Bell's interpretation of this rule should be denied.

In fact, the Commission has spoken on several occasions and at length since the price cap rulemaking was completed on the need to carefully restrict the costs that LECs claim as exogenous. For example, in the United Depreciation

³ AT&T Price Cap Order, 4 FCC Rcd 2873, 3020 (1989) and LEC Price Cap Order, 5 FCC Rcd 6786, 6809-10 (1990).

Order, the Commission noted that not all costs that appear to be outside a carrier's control have or should be given exogenous treatment.⁴ The Commission stated that for incentive regulation to be effective, the LECs should be required to manage their costs, rather than flow through cost changes to ratepayers. The Commission further noted that in those circumstances where a LEC seeks exogenous treatment of a cost not specifically permitted under Section 61.45(d) of the Commission's rules, the correct procedural method to raise the issue is through a request for rule waiver.

No action that the Bureau took in permitting the Telecommunications Relay Service tariffs to take effect can possibly supersede Commission-level determinations. A decision to permit a tariff to take effect is not a final decision on the merits of the issue raised by the tariff. Permitting a tariff to take effect is simply a decision not to employ the Commission's tariff review and investigatory powers to explore a question of reasonableness or compliance with the Commission's rules. The Commission is not foreclosed from reaching the merits subsequently, in either

⁴ Petition for Waiver of the Commission's Rules to Recover Network Depreciation Costs, 9 FCC Rcd 377, 387 (1993) (United Depreciation Order).

a Section 205 investigation or a Section 208 complaint. The precedent on which Southwestern relies is meaningless.

Respectfully Submitted,

MCI TELECOMMUNICATIONS CORPORATION

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Dated: August 30, 1994

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on August 30, 1994.

Donald F. Evans *by JCF*

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CERTIFICATE OF SERVICE

I, Gwen Montalvo, do hereby certify that copies of the foregoing MCI's Opposition were sent via first class mail, postage paid, to the following on this 30th day of August, 1994.

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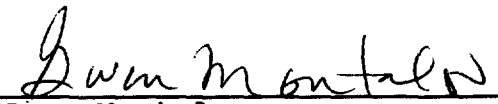
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